

Testimony of Sean Parnell

House Bill 5126

Government Administration & Elections Committee, Connecticut General Assembly

February 24, 2014

Thank you for allowing me to testify today regarding House Bill 5126, the National Popular Vote Interstate Compact. I represent the Freedom Foundation, a nonprofit think tank located in Washington State. It is my hope that after hearing about some of the serious procedural problems with the Compact you will decide to vote against this measure.

The biggest single problem with this Compact, from a technical standpoint, is that it assumes there will be timely and accurate vote counts from all fifty states plus Washington DC that allow the Compact to operate. For obvious reasons, without accurate and timely vote counts from every state, there can be no fair and legitimate operation of the Compact.

But there are significant reasons to believe that the vote counts needed for the Compact to operate may not be either timely or accurate.

According to the Compact's language, member states *must* have the vote counts of non-member states *prior* to the meeting of the Electoral College.

Although the Compact does not specify a source for obtaining these vote totals, the book *Every Vote Equal* identifies each state's 'Certificate of Ascertainment' as the source of vote totals that member states should use. The Certificate includes popular vote totals for presidential candidates or their electoral college slates.

However, contrary to the assumption of the Compact's advocates and assertions made in *Every Vote Equal*, states are *not* required to submit their Certificates or make them public prior to the meeting of the Electoral College.

Federal law is very clear – the governor of each state is required to submit the Certificate of Ascertainment via registered mail to the Archivist of the United States "...as soon as practicable after the conclusion of the appointment of the electors..." There is nothing in federal law that requires the governor to submit it prior to the meeting of the Electoral College, or that it be made public.

Consider the state laws of New York. There is no reference at all to making the Certificate of Ascertainment public, and the only dates referenced in their law are the November general election, the date of the meeting of the Electoral College, and the fourth Wednesday of December, which is in fact the date established under federal law for the Certificate to be received by the Archivist of the United States.

So a very simple way for any non-member state to thwart the Compact, either intentionally or unintentionally, would simply be to not submit their Certificate or release it to the public until

after the electoral college has met. This simple act would leave states that are members of the compact without vote totals from every state, throwing the system into chaos.

The other major problem with attempting to use the Certificate of Ascertainment as the source for determining the winner of the 'national popular vote' is that while they may be available in a timely manner, the vote totals on them may not be accurate.

This was the case in New York in 2012. When the state submitted its Certificate there were about 361,000 votes still uncounted. Between the time New York submitted its Certificate and the time it finished counting votes, President Obama netted about 238,000 additional votes.

To put this into context, those 361,000 uncounted votes in New York represent more than three times the popular vote margin between Kennedy and Nixon, about seven-tenths of the margin between Nixon and Humphrey, and about two-thirds of the margin separating Bush and Gore.

Under the current system of electing the President, New York's 361,000 uncounted votes were not a problem because Obama already had a margin in the state well over 361,000 at the time the Certificate was submitted. But in a close national election like 1960, 1968, or 2000, such a large number of uncounted votes could be decisive.

The crux of the problem with using Certificates of Ascertainment as the source of vote totals is that they are intended to determine which candidate's electoral slate has been elected, not what the final and accurate popular vote count for each candidate was.

At the point in time when one candidate's margin in the vote count substantially exceeds the other's by more than the number of uncounted votes, there is no need to finish the vote counting before submitting their Certificate.

This means that if a state submits its Certificate before they finish counting all the votes, as New York did in 2012, Connecticut would be forced under the Compact to accept those incomplete and inaccurate vote totals, potentially giving the state's electoral votes to a candidate who actually finished second in the number of popular votes cast nationally.

In conclusion, I'd like to say that the idea that the candidate receiving the most popular votes should be elected President may seem a reasonable or appealing one. In fact, in almost all elections for President that is exactly what happens. But it is crucial that you look not only at the lofty goals and rhetoric, but delve into the details and look for ways that the reality might fall well short of the idea.

The fact that the Compact can so easily break down or misfire should demonstrate that this Compact is seriously flawed. I urge you to vote against this poorly-drafted proposal.

I'd be happy to answer any questions that the Committee may have. Thank you.



Electoral College Timeline of Key Dates

The National Archives and Records Administration's Office of the Federal Register prepared this timeline under the authority of 3 U.S.C. 6, 11, 12, and 13 to assist the States in performing their duties.

The term "State" includes the District of Columbia.

The Constitution of the United States and Federal law place certain Presidential election responsibilities on State executives and the electors for President and Vice President.

Key Electoral College Dates and Events

November 6, 2012 – General Election

The voters in each State choose electors to serve in the Electoral College. As soon as election results are final, state officials prepare their "Certificates of Ascertainment," formal lists indicating the names of electors chosen, as well as the names of all other candidates for elector, and number of votes cast for each.

Each state must prepare no less than **SEVEN original** "Certificates of Ascertainment" and send one original along with two certified copies to the Archivist of the United States at the Office of the Federal Register.

Alternatively, state officials may prepare NINE original "Certificates of Ascertainment" and forward three originals to the Archivist of the United States at the Office of the Federal Register.

In either case, the remaining **SIX original** "Certificates of Ascertainment" are held for later pairing and distribution with the "Certificates of Vote."

December 17, 2012 – Meeting of Electors

The electors meet in each State to select the President and Vice President of the United States. The electors record their votes on **SIX original** "Certificates of Vote," which are paired with the remaining **SIX original** "Certificates of Ascertainment." The electors sign, seal, and certify the packages of electoral votes and immediately send them to Federal and State officials as detailed in the accompanying instructions.

December 26, 2012 – Deadline for Receipt of Electoral Votes

The President of the Senate, the Archivist of the United States, and other designated Federal and State officials must have the electoral votes in hand.

January 6, 2013 – Counting Electoral Votes in Congress

The Congress meets in joint session to count the electoral votes (unless Congress passes a law to change the date).



I, Andrew M. Cuomo, Governor of the State of New York, do hereby certify, that the statement containing the Canvass and Certificate of Determination by the State Board of Canvassers of the State of New York, as to ELECTORS of PRESIDENT and VICE PRESIDENT hereto annexed, and certified by the Co-Chairs of the State Board of Elections of New York, under their seal of office, contains a true and correct list setting forth the names of Electors of President and Vice-President, elected in New York, at the General Election held in New York on the Tuesday after the First Monday in November (November Sixth) in the year two thousand twelve, pursuant to the Constitution and the Laws of the United States and of the State of New York, to wit:

Andrew M. Cuomo
Robert Duffy
Eric Schneiderman
Tom DiNapoli
Sheldon Silver
Keith L.T. Wright
Stephanie Miner
Sheila Comar
Joseph Morelle
Christine C. Quinn
Grace Meng
George Gresham
Ruben Diaz, Jr.
Mario Cilento
Irene Stein

Ken Jenkins
Steve Bellone
Hakeem Jeffries
Felix Ortiz
Anne Marie Anzalone
William Thompson
Scott Stringer
Bill DeBlasio
Byron Brown
Gerald D. Jennings
Archie Spigner
Emily Giske
Scott Adams
Walter Cooper

And further that the Statement of Canvass and Certificate of Determination certified by the Co-Chairs of the State Board of Elections of New York, as aforesaid, correctly sets forth the Canvass of Determination under the Laws of the State of New York, of the number of votes given or cast for each person for whose elections any and all votes have been given or cast at said election as aforesaid.



Attested by

In Testimony Whereof, The Great Seal of the State is hereunto affixed.

Witness, my hand at the City of Albany, the tenth day of December, in the year two thousand twelve.

A handwritten signature in dark ink, appearing to be "A. Cuomo", written over a horizontal line.

Secretary of State

A handwritten signature in dark ink, appearing to be "Cesar A. Peralta", written in a cursive style.

STATE OF NEW YORK, ss:

Statement of the whole number of votes cast for all the candidates for the office of **ELECTOR OR PRESIDENT** and **VICE-PRESIDENT** at a General Election held in said State on the Sixth day of November, 2012.

The whole number of votes given for the office of ELECTOR OF PRESIDENT and VICE-PRESIDENT was **6,710,547** of which

		DEMOCRATIC	WORKING FAMILIES	TOTAL
Andrew M. Cuomo	received	4,018,385	141,056	4,159,441
Robert Duffy	received	4,018,385	141,056	4,159,441
Eric Schneiderman	received	4,018,385	141,056	4,159,441
Tom DiNapoli	received	4,018,385	141,056	4,159,441
Sheldon Silver	received	4,018,385	141,056	4,159,441
Keith L.T. Wright	received	4,018,385	141,056	4,159,441
Stephanie Miner	received	4,018,385	141,056	4,159,441
Sheila Comar	received	4,018,385	141,056	4,159,441
Joseph Morelle	received	4,018,385	141,056	4,159,441
Christine C. Quinn	received	4,018,385	141,056	4,159,441
Grace Meng	received	4,018,385	141,056	4,159,441
George Gresham	received	4,018,385	141,056	4,159,441
Ruben Diaz, Jr.	received	4,018,385	141,056	4,159,441
Mario Cilentio	received	4,018,385	141,056	4,159,441
Irene Stein	received	4,018,385	141,056	4,159,441
Ken Jenkins	received	4,018,385	141,056	4,159,441
Steve Bellone	received	4,018,385	141,056	4,159,441
Hakeem Jeffries	received	4,018,385	141,056	4,159,441
Felix Ortiz	received	4,018,385	141,056	4,159,441
Anne Marie Anzalone	received	4,018,385	141,056	4,159,441
William Thompson	received	4,018,385	141,056	4,159,441
Scott Stringer	received	4,018,385	141,056	4,159,441
Bill DeBlasio	received	4,018,385	141,056	4,159,441
Byron Brown	received	4,018,385	141,056	4,159,441
Gerald D. Jennings	received	4,018,385	141,056	4,159,441
Archie Spigner	received	4,018,385	141,056	4,159,441
Emily Giske	received	4,018,385	141,056	4,159,441
Scott Adams	received	4,018,385	141,056	4,159,441
Walter Cooper	received	4,018,385	141,056	4,159,441

STATE OF NEW YORK, ss:

		REPUBLICAN	CONSERVATIVE	TOTAL
H. Douglas Barclay	received	2,145,628	256,171	2,401,799
Roger Burdick	received	2,145,628	256,171	2,401,799
Arcadio Casillas	received	2,145,628	256,171	2,401,799
Craig Eaton	received	2,145,628	256,171	2,401,799
James Ellis	received	2,145,628	256,171	2,401,799
Cheryl A. Heary	received	2,145,628	256,171	2,401,799
Charles Joyce	received	2,145,628	256,171	2,401,799
Virginia Knott	received	2,145,628	256,171	2,401,799
Brian Kolb	received	2,145,628	256,171	2,401,799
Nicholas Langworthy	received	2,145,628	256,171	2,401,799
Kenneth LaValle	received	2,145,628	256,171	2,401,799
Donald Leonard	received	2,145,628	256,171	2,401,799
Howard Lim, Jr.	received	2,145,628	256,171	2,401,799
Adele Malpass	received	2,145,628	256,171	2,401,799
Rebecca Marino	received	2,145,628	256,171	2,401,799
Susan McNeil	received	2,145,628	256,171	2,401,799
Joseph Mondello	received	2,145,628	256,171	2,401,799
Edward Morgan	received	2,145,628	256,171	2,401,799
Robert Price	received	2,145,628	256,171	2,401,799
James Quinn, Jr.	received	2,145,628	256,171	2,401,799
Vincent Reda	received	2,145,628	256,171	2,401,799
William Reilich	received	2,145,628	256,171	2,401,799
Jennifer Saul Rich	received	2,145,628	256,171	2,401,799
Dean Skelos	received	2,145,628	256,171	2,401,799
Paula Snyder	received	2,145,628	256,171	2,401,799
Edward Walsh, Jr.	received	2,145,628	256,171	2,401,799
Lewis Wilson	received	2,145,628	256,171	2,401,799
Edward Cox	received	2,145,628	256,171	2,401,799
Guy Molinari	received	2,145,628	256,171	2,401,799

STATE OF NEW YORK, ss:

		CONSTITUTION	TOTAL
Ephraim J. Hernandez	received	6,106	6,106
Bernard Sengstock	received	6,106	6,106
Marvin E. Henley	received	6,106	6,106
Kurt Walter	received	6,106	6,106
Alan Fried	received	6,106	6,106
Michael Celentano	received	6,106	6,106
Carolyn W. Paddock	received	6,106	6,106
Wayne Senn	received	6,106	6,106
Steven G. Poyzer	received	6,106	6,106
Michael Mullaney	received	6,106	6,106
Peter Wortman	received	6,106	6,106
Donald P. Rosenberg	received	6,106	6,106
Michael Belotti, Sr.	received	6,106	6,106
Jennifer Smith	received	6,106	6,106
Gary E. Jarvis	received	6,106	6,106
Larry W. Sweet	received	6,106	6,106
William D. Wilday	received	6,106	6,106
Kurt D. Paddock	received	6,106	6,106
Barbara Gunsher	received	6,106	6,106
Andrew Raymond	received	6,106	6,106
Eileen Gunsher	received	6,106	6,106

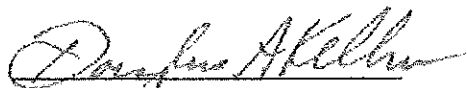
GIVEN under our hands in the city of Albany, New York, this 10th day of December in the year two thousand twelve.

Douglas A. Kellner	Commissioner
James A. Walsh	Commissioner
Evelyn J. Aquila	Commissioner
Gregory P. Peterson	Commissioner

STATE OF NEW YORK)
) ss:
 STATE BOARD OF ELECTIONS)

We certify that we have compared the foregoing with the original certificate filed in this office, and that the same is a correct transcript therefrom and of the whole of such original.

GIVEN under our hands and seal of office of the State Board of Elections, at the city of Albany, this 10th day of December, 2012.


 Douglas A. Kellner
 Co-Chair


 James A. Walsh
 Co-Chair

NYS Board of Elections President and Vice-President Election Returns Nov. 6, 2012

DATED: March 20, 2013 (Kings' update June 9, 2013)

County	Obama Biden	Romney Ryan	Romney Ryan	Obama Biden	Stein Honkala	Lindsey Oserlo	Johnson Gray	Goodie Clymer
	DEM	REP	CON	WOR	GRN	PSL	LBT	CST
Albany	83,979	40,210	4,864	3,577	1,238	52	1,361	164
Allegany	5,866	9,377	1,013	273	162	8	168	28
Broome	39,971	34,708	2,933	1,999	723	21	915	106
Cattaraugus	12,040	14,655	1,914	609	201	13	274	59
Cayuga	16,105	11,646	1,808	902	243	11	285	81
Chautauqua	22,463	24,266	3,705	1,349	324	17	504	58
Chemung	16,205	16,138	1,474	592	151	4	310	73
Chenango	8,642	8,922	791	474	157	6	218	46
Clinton	18,072	9,892	1,223	889	193	9	260	39
Columbia	15,241	10,600	1,625	980	259	14	299	41
Cortland	9,965	7,859	836	517	161	7	187	29
Delaware	7,881	9,086	852	423	199	3	170	24
Dutchess	62,063	48,264	7,761	3,249	785	51	1,105	146
Erie	227,325	149,683	19,992	10,031	2,898	142	3,562	541
Essex	9,368	6,076	571	416	107	4	134	27
Franklin	9,532	5,231	509	362	106	7	116	20
Fulton	8,331	9,830	984	276	111	13	159	42
Genesee	9,092	12,814	1,793	509	115	7	363	42
Greene	8,485	9,811	1,363	545	141	10	233	61
Hamilton	1,092	1,771	161	36	14	0	28	11
Herkimer	10,826	12,166	1,116	447	172	7	259	42
Jefferson	16,231	16,435	1,687	868	151	4	271	61
Lewis	4,530	5,129	522	194	51	2	81	13
Livingston	11,100	12,641	1,807	605	175	6	318	49
Madison	13,231	12,011	1,611	640	238	10	297	56
Monroe	185,916	114,434	18,928	7,585	2,101	91	3,572	334
Montgomery	8,106	8,046	1,288	387	93	5	161	41
Nassau	294,661	237,862	21,446	8,034	2,068	111	2,998	294
Niagara	41,837	38,158	5,082	2,149	560	31	864	98
Oneida	39,031	40,532	3,998	1,437	502	17	819	168
Onondaga	117,470	69,357	9,474	4,784	1,584	55	1,697	295
Ontario	22,065	20,919	2,901	1,022	294	11	571	86
Orange	70,742	58,003	7,364	2,573	700	32	1,049	162

County	Obama Biden	Romney Ryan	Romney Ryan	Obama Biden	Stein Honkala	Lindsay Osoyo	Johnson Gray	Goode Clymer
	DEM	REP	CON	WOR	GRN	PSL	LBT	CST
Orleans	5,505	7,585	1,009	282	81	3	165	36
Oswego	22,178	17,610	2,370	1,337	379	15	447	114
Otsego	11,530	10,451	1,010	587	238	7	212	26
Putnam	18,539	20,925	3,158	973	209	10	397	37
Rensselaer	35,373	24,903	4,210	2,035	612	19	754	80
Rockland	63,908	51,976	5,387	1,748	474	17	631	124
Saratoga	50,998	44,915	5,467	1,959	651	20	1,147	115
Schenectady	35,330	22,952	3,516	1,514	514	19	692	131
Schoharie	5,119	6,497	970	308	108	7	129	20
Schuyler	3,444	3,798	483	230	75	1	80	19
Seneca	6,715	5,244	645	379	101	5	110	16
St. Lawrence	20,486	13,543	1,595	865	227	10	276	63
Steuben	15,015	20,163	1,791	772	232	7	373	81
Suffolk	292,238	246,044	36,087	11,841	2,528	148	3,947	521
Sullivan	14,612	11,347	1,358	656	188	7	195	50
Tioga	8,544	11,160	957	386	172	3	240	58
Tompkins	24,872	10,191	916	2,372	834	30	395	33
Ulster	44,460	26,123	3,636	3,272	944	44	768	78
Warren	14,276	12,925	1,194	530	220	8	312	49
Washington	10,993	9,793	1,292	530	177	6	222	43
Wayne	15,732	17,248	2,812	903	222	15	424	83
Westchester	234,778	131,139	11,983	6,007	1,627	76	2,042	228
Wyoming	5,357	9,248	1,100	304	96	6	135	55
Yates	4,259	4,269	529	229	67	3	69	17
Total Outside NYC	2,391,747	1,826,581	226,961	98,753	27,953	1,267	37,770	5,396
Bronx	334,642	26,682	3,285	4,569	774	105	608	122
Kings *	585,491	113,752	10,799	18,952	4,411	219	2,500	276
New York	488,632	85,245	4,314	14,042	3,860	230	3,104	146
Queens	461,545	108,881	9,708	9,187	2,465	183	2,375	254
Richmond	75,565	66,919	7,304	2,616	519	46	899	80
Total NYC	1,945,875	401,479	35,410	49,366	12,029	783	9,486	878
Statewide Total	4,337,622	2,228,060	262,371	148,119	39,982	2,050	47,256	6,274
RECAP	4,485,741	2,490,431			39,982	2,050	47,256	6,274